

November 27, 1996

Jennifer B. Schlosstein
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Seattle, WA 98101-3045

Dear Ms. Schlosstein:

This letter is in response to your letter of July 2, 1996, sent to Michael Kussow, APCO of Shasta County Air Quality Management District (AQMD). In it you requested that Shasta AQMD make a formal determination on the question of whether Specialty Minerals Inc. (SMI) must be included in the Simpson Paper Company Shasta Mill (Mill) application for a title V operating permit as a "support facility." You sent us a copy of this letter, requesting that EPA address the issue as well. We then requested a copy of the contractual documentation between the Mill and SMI, which you provided us in late August.

After review of your July letter, with its accompanying memorandum from your counsel, our office, in consultation with Shasta AQMD, has decided that SMI should be considered as part of the same source as the Mill when applying for a title V permit. The factors on which we based our decision are as follows:

1) Part 70 defines a major source as "any stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control), belonging to a single major industrial grouping [Standard Industrial Classification code]..." SMI is clearly on adjacent property, which it leases from the Mill. And, although the Mill and SMI facilities have different SIC codes, the Preamble of the 1980 Prevention of Significant Deterioration (PSD) rule discusses the situation of a support facility being included with another facility as one source classification:

Each source is to be classified according to its primary activity, which is determined by its principal product... Thus, one source classification encompasses both primary and support facilities, *even when the latter includes units with a different two-digit SIC code*. Support facilities are typically those which convey, store or otherwise assist in the production of the principal product. (45 ~FR 52695, August 7, 1980) (emphasis added)

Both the Mill and SMI are involved in the same primary activity, which is the process of paper production. Therefore, in order to determine whether the two facilities are one major source, the only factor left to consider is whether there is a compelling enough argument that common control exists between the two facilities.

2) EPA has no regulatory definition of "common control," so the Agency has relied on the

common definition. Webster's Dictionary defines *control* as "to exercise restraining or directing influence over," "to have power over," "power of authority to guide or manage," or if it "[regulates] economic activity." (letter from W. Spratlin, Director of Air, RCRA, and Toxics Division, EPA Region VII, to State and Local Air Directors, September 18, 1995)

Historically, the criteria for making common control determinations has been to examine the relevant economic, legal, and functional relationships between or among facilities on a case-by-case basis. In looking at the contractual relationship between the Mill and SMI, it is clear that the Mill is able to influence production levels of the product precipitate calcium carbonate (PCC) at SMI, although it does not have the power to make or veto decisions regarding pollution control.

3) Guidance from EPA Region VII on the question of control and co-located facilities states that:

Typically, companies don't just locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact with each other. Therefore, we presume that one company locating on another's land establishes a "control" relationship. (letter from W. Spratlin, Director of Air, RCRA, and Toxics Division, EPA Region VII, to State and Local Air Directors, September 18, 1995)

For facilities that wish to contest this presumption, the Region VII letter provides a list of "screening" questions to establish whether control exists between the two facilities. Your counsel referred to this letter in their memo, and we have found several of the questions can be answered positively in the case of the Mill and SMI:

- Does one operation support the operation of the other? *Yes, SMI currently supports the Mill's production of paper by providing 100% of its output of PCC to the Mill for use in paper production.*
- What are the financial arrangements between the two entities? *Mutually beneficial.*
- Do the facilities share equipment, other property, or pollution control equipment? *Yes, SMI rents land from the Mill for a nominal sum. In addition, they share the Mill's effluent treatment system, and the Mill has leasehold interest in lines, valves and connections on the property, and must maintain them.*
- What are the contractual arrangements for providing goods and services? *The Mill has the authority under the contract to require that ~SMI increase production of PCC.*
- Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? *Yes, the Mill provides CO₂ to SMI for use in producing PCC.*

Not all of the questions in Region VII's letter can be answered affirmatively in this case,

but the guidance states that the list serves as a "screening tool," and that "if the facilities responded in the positive to one or more of the major indicators of control... then the new company is likely under the control of the existing source, or under common control by both companies, and cannot be considered a separate entity for permitting purposes."

4) Would an entity be located at that site "but for" the presence of another or the other entity? This is a test that has been used in making NSR determinations. It asks whether a facility such as SMI, that uses CO₂ from the Mill, sells 100% of the resulting product back to the Mill, and has advantageous economic benefits regarding rental and equipment and maintenance costs, would realistically remain at that location should the Mill close permanently. We understand that there was a period of one year when the Mill did close temporarily and SMI continued operating, but the Agency maintains that this would not make economic sense if the closure was final. We therefore conclude that SMI would probably not be located at this particular site "but for" the existence of the Mill.

5) Contract-for-Service Relationship: An EPA policy guidance letter on the treatment of temporary and contracted operations at stationary sources states that "temporary and contractor-operated units be included as part of the source with which they operate or support. A recent informal survey of the EPA Regional Offices confirmed that States are including these operations in defining major sources." (letter from John Seitz, Chief of the Office of Air Quality Planning and Standards to the Minnesota Pollution Control Agency, November 16, 1994)

In addition, the recent EPA guidance on major source determination for the Department of Defense (DOD) clarifies that "a determination of common control may be made on the basis of.... indirect control, such as when the goods or services provided by a co-located, contract-for-service entity are integral to or contribute to the output provided by a separately 'owned or operated' activity with which it operates or supports." (DOD major source guidance, August 2, 1996, page 8)

This approach is supported by case examples such as the auto industry in Michigan, where a co-located facility is considered to support the main source, and as such is included with the source for purposes of title V.

6) Finally, the Agency has a responsibility to maintain national consistency in its applicability determination. In this particular case, we have found an important precedent that involves Champion International Corporation (CIC) paper mill and Pfizer Specialty Minerals (PSM) in Michigan. The two facilities have essentially an identical relationship to the one between the Mill and SMI in California, in that PSM uses CO₂ from the CIC mill to make PCC, and sells the PCC back to the mill.

When the PSM facility applied to build the PCC plant in Michigan, EPA Region V made a determination not to exempt PSM from PSD review, and stated that "where a satellite plant locating on a host source's property provided an essential service solely for the host benefit... the two plants were determined to be a single source for PSD applicability purposes." (letter to Michigan Air Pollution Control Commission, from Stephen Rothblatt, EPA Region V, August,

1990) Historically, the two facilities have operated under one permit issued jointly (Permit #24-90). Two months ago, Michigan Department of Environmental Quality made a determination that the PSM facility must be included with the CIC mill for title V purposes. As Pfizer owns the Specialty Mineral facilities in both California and Michigan, it is particularly important in this case for EPA to be consistent in making its applicability determination.

In conclusion, we have weighed the evidence and found the balance clearly tips towards a same source determination due to common sense, Agency guidance, and historical precedent, as outlined above. We have consulted with Shasta AQMD on this decision, and they are in agreement. There is no need for Simpson and SMI to certify or assure compliance over each other in a title V permit. EPA recommends that even though they are considered one source, each facility apply for a separate title V permit, each with its own responsible official, under the title V application process.

I hope this has clarified the situation from EPA's perspective. If you have any further questions, please contact Sara Bartholomew of my staff, at (415) 744-1250, or myself at (415) 744-1254.

Sincerely,

Matt Haber, Chief
Permits Office

cc: Michael Kussow, Air Pollution Control Officer, Shasta AQMD
Michele Dubow, U.S. EPA Office of Air Quality Planning and Standards
Stephen Rothblatt, Chief of the Air Programs Branch, EPA Region V
Brian Brady, Michigan Department of Environmental Quality

Enclosures:

- Letter from W. Spratlin, Director of Air, RCRA, and Toxics Division, EPA Region VII, to State and Local Air Directors, September 18, 1995
- Letter from John Seitz, Chief of the Office of Air Quality Planning and Standards to the Minnesota Pollution Control Agency, November 16, 1994
- Department of Defense major source guidance, August 2, 1996
- Letter to Michigan Air Pollution Control Commission, from Stephen Rothblatt, EPA Region V, August, 1990